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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/883,659

06/18/2001

Michael A. Zdan

P12689-PUSBN

1010

7590

04/05/2005

John Han

Associate General Counsel-IPR

Ericsson Inc.

6300 Legacy Drive, M/C EVW2-C-2

Plano, TX 75024

EXAMINER

HAILE, FEBEN

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,659

Applicant(s)

ZDAN, MICHAEL A.

Examiner

Feben M Haile

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 9-19 is/are rejected.
- 7) ☒ Claim(s) 2-8 & 20-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/18/01 & 3/19/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 9 - 18 are rejected under 35 U.S.C. 112, second paragraph.

Regarding claim 9, the limitation "said identified behavior aggregate value" is recited. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Pashtan et al. (US 6,542,466), hereinafter referred to as Pashtan.

Regarding claim 1, Pashtan discloses a method of routing packets within a communication system (column 1 lines 31-33; communication traffic flow is controlled by a method known as Differentiated Services) comprising the steps of: receiving a packet from a communications network (figure 3 units 311 & 391 and column 2 lines 49-51; data packets ingress at nodes 311 and 391); allocating a message block header within said received packet (column 1 lines 40-43; a value, which manages quality of

service, is encoded into the DS field of a data packet); associating a predefined default value for said message block header (column 1 lines 49-51; the value of the DS field is assigned by an edge network element); identifying a quality-of-service value associated with said received packet (figure 2 unit 220 and column 2 lines 2-6; a classifier selects data packets in the stream according to the DS field), metering the received packet to determine whether resources are available to properly route the packet while complying with a service level agreement associated with said classified quality-of-service (figure 2 unit 230 and column 2 lines 9-11; a meter measures the property of the traffic flow passing through the classifier to determine if the data packet is in or out of a predefined traffic profile); in response to a determination that said packet cannot be routed in compliance with said service level agreement, dropping said packet (figure 2 unit 250 and column 2 lines 17-19; according to state information sent by the meter a dropper determines which data packets need to be discarded), otherwise, routing said packet (it is inherent that if the dropper determines that a data packet does not have to be discarded then it would continue to route the packet).

Regarding claim 19, Pashtan discloses an apparatus for providing differentiated service routing within a packet communication system (column 1 lines 31-33; communication traffic flow is controlled by a method known as Differentiated Services) comprising the steps of: means for receiving a packet from a communications network (figure 3 units 311 & 391 and column 2 lines 49-51; data packets ingress at nodes 311 and 391); means for allocating a message block header within each of said received packet (column 1 lines 40-43; a value, which manages quality of service, is encoded

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into the DS field of a data packet); means for assigning behavior aggregate value for each of said received packets (column 1 lines 49-51; the value of the DS field is assigned by an edge network element); means for metering some of said received packets to determine whether resources are available to properly route said packets while complying with a service level agreement associated with said behavior aggregate value (figure 2 unit 230 and column 2 lines 9-11; a meter measures the property of the traffic flow passing through the classifier to determine if the data packet is in or out of a predefined traffic profile); in response to a determination that a particular packet cannot be routed in compliance with said service level agreement, means for dropping said packet (figure 2 unit 250 and column 2 lines 17-19; according to state information sent by the meter a dropper determines which data packets need to be discarded), otherwise, means for routing said packet (it is inherent that if the dropper determines that a data packet does not have to be discarded then it would continue to route the packet).

Allowable Subject Matter

3. Claims 2-8 & 20-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 9-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a) Nicholas (US 2003/0012144), Method and Apparatus for Providing Differentiated Services Using a Multi-Level Queuing Mechanism

b) Le Gouriellec et al. (US 2003/0112756), Conditional Bandwidth Subscriptions for Multiprotocol Label Switching (MPLS) Label Switched Paths (LSPs)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Feben M Haile whose telephone number is (571) 272-3072. The examiner can normally be reached on 6:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571) 272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KENNETH VANDERPUYE
PRIMARY EXAMINER